

# Legislative Fiscal Bureau

## Fiscal Note

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SF 422 - Sentencing Reform (LSB 2707 SV.2)

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Fiscal Note Version — SF 422 as Amended and Passed by the House

Requested by Senator Donald R. Redfern

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### **Description**

Senate File 422, as amended and passed by the House, relates to sentencing options. The Bill, as amended and passed by the House, amends sentencing options for powder and crack cocaine. The Bill, as amended and passed by the House, repeals the sentencing option of a determinate term for certain Class D felony convictions. Senate File 422, as amended and passed by the House, provides for a reopening of a judgment and sentence for certain crimes referred to as “85.0%” sentences where, under current law, an inmate must serve 85.0% of the sentence to be eligible for release from prison. The county attorney may reopen these sentences at any time without a mandatory minimum term being served, both retroactively and in the future. The Bill, as amended and passed by the House, also modifies Iowa’s Operating While Intoxicated (OWI) statutes so that upon a finding of not guilty, the Department of Transportation (DOT) is required to reinstate the person’s driver’s license if it has been revoked. The DOT is also required to destroy any records related to that specific revocation.

### **Assumptions**

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
3. The law will become effective July 1, 2003. A lag effect of six months is assumed, from the law’s effective date to the date of first entry of affected offenders into the correctional system.
4. The information in this fiscal note is based on data in the Justice Data Warehouse, which consists of court and Community-Based Corrections (CBC) information through FY 2002.
5. Iowa’s convictions, incarceration rate, and number of admissions to prison will not change under this Bill.
6. Court hearings for considering the reopening of a sentence will be held in the county of the offender’s conviction.
7. On average, offenders not serving Murder in the Second Degree 85.0% terms would be recommended to the court for sentence reconsideration after at least seven years have been served on their sentence. This is based on the average length of stay in prison for Class B felony non-murder offenses before the 85.0% laws were enacted. This analysis recognizes that many offenders serving 85.0% sentences for Robbery in the Second Degree were plea-bargained from a charge of Robbery in the First Degree. It is assumed these offenders will be treated as Robbery in the First Degree. For offenders convicted of Murder in the Second Degree and serving 85.0% sentences, they will be recommended to the court for sentence reconsideration after serving at least 16 years.
8. At mid-year 2002, there were 608 offenders serving 85.0% terms as their most serious offense. Of these, 590 offenders were serving sentences under Section 902.12, Code of Iowa, and would be eligible for sentencing reconsideration under the Bill as amended and passed by the House. The remaining 18 offenders were convicted of sexually predatory offenses and would not be considered for reopening of their sentence. Approximately 25.0% of the Class C felony cases would be eligible for the sentencing

court's reconsideration after serving a minimum of at least seven years in prison. These provisions will not impact offenders convicted of Class B 85.0% sentences.

9. This analysis provides the maximum number of potential sentences that could be reopened under the Bill as amended and passed by the House. No attempt was made to estimate how many judges would reject the reconsideration of sentences. The actual number of sentences that are reopened if SF 422, as amended and passed by the House, is enacted ranges from 0 to 5 in FY 2004, 0 to 21 for FY 2005, FY 2006, and FY 2007, and 0 to 29 in FY 2008.
10. The Bill, as amended and passed by the House, permits county attorneys to file a motion to reopen an 85.0% sentence for those offenders sentenced before the enactment date of the Bill, and in the future. The offenders are not required to serve a minimum term before being considered for re-sentencing.
11. The Bill, as amended and passed by the House, requires the county attorney to notify all victims who have registered with the county attorney's office that a case is being considered for reopening. The notice is required to be made by certified mail. County expenditures related to staff time, postage, and office supplies may increase under this provision; however, these costs are not anticipated to be significant.
12. Senate File 422, as amended and passed by the House, requires Clerk of Court Offices to notify registered victims of the date, time, and place of the re-sentencing hearing, and any postponements or cancellations of the re-sentencing hearing. Expenditures related to staff time, postage, and office supplies may increase under this provision; however, these costs are not anticipated to be significant.
13. The Office of the Attorney General will incur additional costs associated with sentence reopenings. It is estimated that each hearing will require 1.5 attorney days plus clerical support, to prepare and file motions, represent the State, and travel to the county of conviction, at a cost of \$722 per hearing.
14. The Judicial Branch will incur additional costs for sentence reopenings. Each hearing is estimated to be one hour for a Clerk of Court staff, District Court Judge, Court Reporter and a Court Attendant at a cost of \$114.
15. The Indigent Defense Program will incur additional costs for each case that is reopened. The estimated cost per case is \$300.
16. The repeal of the determinate Class D felony option will reduce the average length of stay for certain offenders. During FY 2002, 39 offenders were sentenced under this provision. Approximately 53.8% of these offenders will serve a longer prison sentence than if they had been sentenced to an indeterminate term.
17. Community-Based Corrections (CBC) will experience an initial increase in parole cases. Over the long term, caseloads will not be significantly impacted. Offenders released under the reopening of a sentence will be released to work release at an average daily cost of \$15 per day. After completing work release, these offenders will be paroled to the Intensive Supervision level, at an average daily cost of \$9.91.
18. There will be additional costs for the Indigent Defense Program due to the increased number of cases that will be tried at a higher felony level due to the powder cocaine provisions. The cost increase is approximately \$2,300 per case.
19. There are 1,404 CBC facility beds statewide. Of these, approximately 466 are dedicated to the work release program. There were 171 offenders in prison on April 2, 2003, who had been approved for work release but were waiting for a CBC bed to become available. The facilities are operating at full capacity under current law. The Bill, as amended and passed by the House, may increase demand for CBC beds, or alternatively, day programming.
20. The average annual cost for a new Parole/Probation Officer III is \$52,000 (salary and benefits). The standard supervision ratio for Intensive Supervision is 1 officer to 30 offenders. Offenders paroled under the Bill, as amended and passed by the House, will be supervised for multiple years.

21. The State prisons were operating at 124.5% of current designed capacity on April 18, 2003, with a prison population of 8,484 offenders. Current designed capacity is 6,812 beds. Designed capacity will increase to 7,142 beds by FY 2007 when the Clinical Care Unit at Fort Madison (200 beds) is fully operational in June 2003 and the 170-bed Special Needs Unit at Oakdale is constructed and operating (FY 2007).
22. The State prison budget is based on 7,600 inmates; the current system is operating at 111.6% of budgeted capacity.
23. The Criminal and Juvenile Justice Planning Division in the Department of Human Rights released its prison population forecast in December 2002. The report stated that by FY 2012, the prison population is expected to reach 12,127 offenders if there are no changes to offender behavior, and justice system policies, trends, and practices remain unchanged.
24. If the prison population reaches 12,127 offenders, five new prisons will need to be built over the next ten years. Construction cost per prison is estimated to be \$45.0 million, and annual operating costs are approximately \$28.0 million. If five new 750-bed prisons are built, total construction costs are estimated to be \$225.0 million and annual operating costs are estimated to be \$140.0 million. If the prison population reaches 12,127 offenders and five new prisons are built, designed capacity would be 10,892 beds, and the prisons would be operating at 111.4% of designed capacity.
25. There is no operating cost savings for Iowa's prison system under this Bill. Rather, the sentencing options are a cost avoidance mechanism.
26. The Bill, as amended and passed by the House, requires the Department of Transportation (DOT) to rescind the license revocation order and reinstate the driver's license of a person who has been arrested for an OWI violation, and found not guilty. The DOT is required to expunge all records related to that revocation.
27. There were 15,036 OWI charges disposed of in FY 2002. Of these, 1,077 (7.2%) were dismissed or acquitted. There were 92 OWI cases closed via bench trial and 79 OWI cases closed via jury trial. The cases that went to trial had a 28.0% acquittal rate, which is a higher acquittal rate than for cases that do not go to trial. The provision related to license reinstatement provides an incentive to the defendant to request a trial. Any increase in OWI trials will increase costs for the Judicial Branch. Because the number of OWI cases disposed of annually is large, the impact on the Judicial Branch could be significant. However, there is no readily available information with which to estimate how many more trials will occur.

### **Correctional Impact**

Admissions to prison will not change. However, the average length of stay for certain offenders will decrease. There will be prison readmissions for those offenders released under sentencing reopenings, who failed the requirements of work release or parole, and are revoked back to prison. There will be two readmissions in FY 2006, two readmissions in FY 2007, and three readmissions in FY 2008. The table below illustrates the maximum cumulative impact on the prison population. The provisions in SF 422, as amended and passed by the House, that relate to powder cocaine increase the prison incarceration rate for these offenses. On an annual basis, 17 offenders convicted as Class C felons under current law for powder cocaine offenses will become Class B felons under SF 422 as amended and passed by the House.

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
Cocaine	5	15	25	31	31
Sentence Reopenings	- 5	- 21	- 21	- 21	- 29
Repeal Determinate D	<u>0</u>	<u>0</u>	<u>- 22</u>	<u>- 22</u>	<u>- 22</u>
Total	<u><u>0</u></u>	<u><u>- 6</u></u>	<u><u>- 18</u></u>	<u><u>- 12</u></u>	<u><u>- 20</u></u>

The cumulative impact is different than the actual number of offenders released annually, due to the long length of stay under current law. The number of estimated releases under sentence reopenings stabilizes in FY 2005 because prison terms for certain Class C offenders will begin to expire. Offenders released from prison due to expiration of sentence are not supervised in the community after their release.

The offenders released under sentencing reconsideration will be placed in work release facilities, paroled from those facilities by the Board of Parole, and then intensively supervised while on parole by the CBC District Departments. Community-Based Corrections District Departments may seek funds to begin or expand day programming, which combines intensive supervision with treatment, electronic monitoring, and daily reporting to a CBC facility. This program permits the length of stay in work release to be reduced while maintaining security.

The number of admissions to work release in outlying years may result in the CBC system shifting beds from probation and the Operating While Intoxicated (OWI) facility-based treatment program. If this occurs, the prison population may increase because probation and the OWI treatment program serve as a diversion from prison.

Offenders released to CBC supervision due to repealing the determinate Class D felony sentencing option would have been released to CBC under current law; their length of stay in prison is reduced. There is no impact on CBC resources for repealing this sentencing option.

The possibility exists that no offenders may be released under the sentencing reopening provisions of SF 422 as amended and passed by the House.

### **Fiscal Impact**

The estimated net fiscal impact of SF 422, as amended and passed by the House, to the State General Fund is an increase in expenditures of \$35,000 during FY 2004, and an increase in expenditures of \$115,000 in FY 2005. Costs in outlying years will increase if more sentences are reopened. If no sentences are reopened, the fiscal impact of the enhanced sentencing option for powder cocaine is anticipated to be \$39,000 annually. The fiscal impact of the other sentencing options is expected to be minimal. A breakdown of expenditures follows.

Sentence Reopening		
	FY 2004	FY 2005
Attorney General's Office	\$ 4,000	\$ 15,000
Judicial Branch	1,000	3,000
State Public Defender's Office	1,500	6,000
CBC Facilities	0	0
CBC Supervision Staff	9,000	52,000
Subtotal	\$ 15,500	\$ 76,000
Indigent Defense - Powder Cocaine	\$ 19,500	\$ 39,000
Total	<u>\$ 35,000</u>	<u>\$ 115,000</u>

CBC Facilities are currently at capacity. Offenders approved for work release will remain in prison until a CBC facility bed becomes available. Therefore, costs for CBC facilities will not increase. Additional CBC staff will be required for the Intensive Supervision Program statewide: 0.17 FTE position in FY 2004 and 1.0 FTE position in FY 2005.

The impact on counties is not expected to be significant.

**Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Department of Corrections  
Judicial Branch  
State Public Defender's Office  
Iowa State Association of Counties  
Office of the Attorney General  
Iowa County Attorneys Association  
Board of Parole  
Department of Public Safety  
Department of Transportation

/s/ Dennis C Prouty

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April 28, 2003

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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